IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 21579 of 2005(R)

OS.80/2002 of SUB COURT, QUILANDY

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PETITIONER:

MADATHIL R.K.UNNIKRISHNAN NAIR,
S/O. DAKSHAYANI AMMA, AGED 66 YEARS,
AGRICULTURIST, PAVANDOOR AMSOM, DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

RESPONDENTS:

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1. MADATHIL K.SANTHA AMMA,
D/O. DAKSHAYANI AMMA, AGED 63 YEARS, SWASTHAM,
KAKKUR VILLAGE, PAVANDOOR DESOM, KOZHIKODE TALUK,
KOZHIKODE DISTRICT.

2. BROTHER K.MOHANAN NAIR,
S/O. DAKSHAYANI AMMA, AGED 60 YEARS,
AGRICULTURIST, -DO- - DO-.

3. MADATHIL K.VELAYUDHAN NAIR,
S/O. DAKSHAYANI AMMA, AGED 57 YEARD,
-DO- -DO-.

4. BROTHER K.VENUGOPALAN NAIR, (DIED)
S/O. DAKSHAYANI AMMA, AGED 53 YEARS,
AGRICULTURIST, -DO- - DO-.

5. BROTHER K.RAGHU NAIR,
S/O. DAKSHAYANI AMMA, AGED 49 YEARS,
PEON, -DO- -DO-.

6. EDAPUTHIYADATH VIJAYARAGHAVAN NAIR,
S/O. KAMALAKSHI AMMA, AGED 54 YEARS,
BANK SECRETARY, PANANGAD AMSOM, DESOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT.

7. SISTER -DO- GEETHA AMMA,
D/O. KAMALAKSHI AMMA, AGED 57 YEARS,
SWASTHAM, -DO- -DO-.

8. SISTER, -DO- SUDHA AMMA,
D/O. KAMALAKSHI AMMA, AGED 54 YEARS,
-DO- -DO-.

9. SISTER, -DO- SHYAMA,
D/O. KAMALAKSHI AMA, AGED 50 YEARS,
SWSTHAM, -DO- -DO-.

10. SISTER, -DO- SATHY,
D/O. KAMALAKSHI AMMA, AGED 46 YEARS,
SWASTHAM, -DO- -DO-.

11. BROTHER, JAGADEESH, S/O.KAMALAKSHI AMMA,
AGED 43 YEARS, AGRICULTURIST, -DO- -DO-.

12. BROTHER, -DO- HAREESH,
S/O.KAMALAKSHI AMMA, AGED 41 YEARS,
AGRICULTURIST, -DO- -DO-.

13. VADAKKE CHALIL LAKSHMIKUTTY AMMA,
W/O. BALAKRISHNAN NAIR, AGED 62 YEARS,
SWASTHAM, IYYAD AMSOM, DESOM, -DO- -DO-.

14. SON, -DO- RAJAGOPALAN NAIR,
S/O. BALAKRISHNAN NAIR, AGED 43 YEARS,
EMPLOYEE IN DEVASWOM BOARD -DO- -DO-.

15. BROTHER,VADAKKE CHALIL RAJENDRAN NAIR,
S/O. BALAKRISHNAN NAIR, AGED 37 YEARS,
AGRICULTURIST, PANANGAD AMSOM, DESOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT.

16. SISTER, -DO- RAJALAKSHMI AMMA,
D/O. BALAKRISHNAN NAIR, AGED 40 YEARS, SWASTHAM,
-DO- -DO-.

17. SISTER, -DO- RAJASREE,
D/O. BALAKRISHNAN NAIR, AGED 35 YEARS,
SWASTHAM, -DO- -DO-.

18. PERINHADIMEETHAL SARADHA AMMA,
D/O. KALLIANI AMMA, AGED 47 YEARS, SWASTHAM,
NOW RESIDING AT KAKKATTUMMAL, IYYAD AMSOM, DESOM,
KOYILANDY TALUK, KOZHIKODE DISTRIT.

19. -DO- SAYIMOL ALIAS SAKUNTHALA,
D/O. SARADA AMMA, AGED 24 YEARS, -DO- -DO-.

20. NEENANCHERI KUNNUMMAL SURESH,

S/O. PADMANABHAN NAIR, AGED 31 YEARS,
JAWAN, -DO- -DO-.

21. MAMINIYIL SASIKUMAR,
S/O. MATHUKUTTY AMMA, AGED 36 YEARS,
AGRICULTURIST, -DO- - DO-.

22. ULIKUNNUMMAL DEVI, D/O. KARIYATHAN,
AGED 37 YEARS, SWASTHAM, -DO- -DO-.

23. CHANAGHAMKANDY MANOHARAN,
S/O. GOVINDANKUKTTY NAIR, AGED 56 YEARS,
AGRICULTURIST, -DO- -DO-.

24. -DO- PEETHAMBARAN,
S/O. GOVINDANKUTTY NAIR, AGED 53 YEARS,
AGRICULTURIST, -DO- -DO-.

25. -DO- SOBHANA AMMA,
D/O. GOVINDANKUTTY NAIR, AGED 48 YEARS,
SWASTHAM, -DO- -DO-.

26. -DO- VASANTHY AMMA,
D/O. GOVINDANKUTTY NAIR, AGED 43 YEARS,
SWASTHAM, -DO- -DO-.

27. MOTHER -DO- SAROJINI AMMA,
W/O. GOVINDANKUTTY NAIR, AGED 78 YEARS,
SWASTHAM, -DO- -DO-.

28. NEELANCHERIMMAL KRISHNA KUMAR,
S/O. SEKHARAN NAIR, AGED 40 YEARS, TEACHER,
-DO- -DO-.

29. -DO- JAYAKUMAR, S/O. SEKHARAN NAIR,
AGED 36 YEARS, AGRICULTURIST, -DO- -DO-.

30. -DO- SUDHA, D/O. SEKHARAN NAIR,
AGED 45 YEARS, SWASTHAM, -DO- -DO-.

31. -DO- JAYANTHI, D/O. SEKHARAN NAIR,
AGED 32 YEARS, SWASTHAM, -DO- -DO-.

32. MOTHER, -DO- PADMAKSHI AMMA,
W/O. SEKHARAN NAIR, AGED 65 YEARS,
SWASTHAM, -DO- -DO-.

33. CHERUVATHKANDIYIL ABDULLA, S/O. AMMATH,
AGED 53 YEARS, BUSINESS, -DO- -DO-.

34. PUTHIYOTTIL ABDUL NAZAR, S/O. ABDULLA,
AGED 34 YEARS, AGRICULTURIST, -DO- -DO-
BY POWER OF ATTORNEY HOLDER, PUTHIYOTTIL MUHAMMED-
BASHEER, -DO- -DO-.

***ADDL R35 & R36 IMPLEADED**

35. MADATHIL PREMA, W/O.LATE VENUGOPALAN NAIR,
KAKKUR VILLAGE, PAVANDOOR DESOM, KOZHIKODE TALUK,
KOZHIKODE DISTRICT.

36. MADATHIL VEENA, D/O.LATE VENUGOPALAN NAIR, DO.

*ADDL.R35 AND R36 ARE IMPLEADED AS PER THE ORDER DATED 18.6.2007 IN I.A.NO.13956 OF 2005.

R23 & R 32 BY ADV. SRI.K.M.MOHAMMED KUNHI
R18 & R22 BY SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.
R34 BY SRI.B.V.JOY SANKER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 21579/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF PLAINT IN O.S.NO.80/02 ON THE FILE OF THE SUB COURT, KOYILANDY.

EXT.P2: TRUE COPY OF WRITTEN STATEMENT OF DEFENDANTS 18, 19, 21 & 22 IN THE ABOVE SUIT.

EXT.P3: TRUE COPY OF WRITTEN STATEMENT OF 33RD DEFENDANT IN THE ABOVE SUIT.

EXT.P4: TRUE COPY OF WRITTEN STATEMENT OF 34TH DEFENDANT IN THE ABOVE SUIT.

EXT.P5: TRUE COPY OF ORDER ON PRELIMINARY ISSUES 1 AND 2 IN O.S.NO.80/02 ON THE FILE OF THE SUBORDINATE JUDGE, KOYILANDY, DATED 6.6.2005.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.21579 of 2005

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Dated: 18th June, 2007

JUDGMENT

Mr.B.Krishnan, counsel for the petitioner submits that the learned Munsiff has issued several directions in the impugned order and some of them are incapable of being complied with. Counsel submits relying on the judgment of the Division Bench of this court in **Appukuttan v. Kamalakshi** (1996(2) KLJ 593) that the petitioner is prepared to concede that the value of the plaint schedule property is as found by the court below and also that the suit is to be valued under Section 40(2) of the Court Fees and Suits Valuation Act. According to him, since a relief of declaration that a document is void is sought for, the other reliefs ought to be construed as ancillary reliefs. Mr.Krishnan further submitted that if it becomes to that, the petitioner will be prepared to value the relief of partition separately under Section 37(2) of the Act though in the nature of this case there is justification for considering the relief of partition even as an ancillary relief.

2. I have gone through the plaint and I have heard the submissions of the learned counsel for the respondents also. I feel that the petitioner shall file an application before the court below to

amend the relief portion of the plaint in such a manner that the plaintiff seeks only necessary reliefs and the prayers made in a manner which will be least onerous from the point of view of the plaintiff in terms of court fee. In order to enable the petitioner to do that, I set aside Ext.P5 and direct the learned Subordinate Judge to decide the question of valuation and sufficiency of court fee after the suit is amended as per application for amendment which will be filed by the petitioner within six weeks from today.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**